

RESOLUTION NO. 2020-62

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING A FIRST AMENDMENT TO THE REVOCABLE LICENSE AGREEMENT WITH PADL LLC FOR THE PADDLEBOARD SHARING PROGRAM; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on May 21, 2019, the Village of Key Biscayne (“Village”) Council adopted Resolution No. 2019-27, approving a Revocable License Agreement (“Agreement”) with PADL LLC (“PADL”) to operate a paddleboard sharing concession program (“Program”); and

WHEREAS, the Village wishes to permit PADL to continue operating its Program at the Village’s Beach Park located at 695 Ocean Drive, Key Biscayne, Florida (“Beach Park”) for the benefit of Village residents; and

WHEREAS, the Village and PADL wish to amend the Agreement, in substantially the form attached hereto as Exhibit “A,” (“First Amendment”) to extend the term of the Agreement and provide for revenue sharing; and

WHEREAS, the Village Council finds that this Resolution is in the best interest and welfare of the residents of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:

Section 1. **Recitals.** That each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. **Amendment Approved.** That the First Amendment between the Village and PADL, in substantially the form attached hereto as Exhibit “A”, is hereby approved.

Section 3. Authorization. That the Village Council hereby authorizes the Village Manager to execute the Agreement, in substantially the form attached hereto as Exhibit "A," subject to the approval of the Village Attorney as to form, content, and legal sufficiency.

Section 4. Effective Date. That this Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this 17th day of November, 2020.


MICHAEL W. DAVEY, MAYOR

ATTEST:


JOCELYN B. KOCH
VILLAGE CLERK



APPROVED AS TO FORM AND LEGAL SUFFICIENCY:


WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.
VILLAGE ATTORNEY

**FIRST AMENDMENT TO THE
REVOCABLE LICENSE AGREEMENT
BETWEEN
THE VILLAGE OF KEY BISCAYNE
AND
PADL LLC**

THIS FIRST AMENDMENT TO THE REVOCABLE LICENSE AGREEMENT BETWEEN THE VILLAGE OF KEY BISCAYNE AND PADL LLC ("First Amendment") is entered into as of this 11 day of December, 2020 ("Effective Date"), by and between the **VILLAGE OF KEY BISCAYNE**, a Florida municipal corporation ("Village"), and **PADL LLC** ("PADL"), a Florida limited liability company, collectively referred to as the "Parties."

WHEREAS, on June 20, 2019, the Village and PADL entered into a Revocable License Agreement ("Agreement") for a one (1) year term for operation of a paddleboard sharing concession program at the Village's Beach Park located at 695 Ocean Drive, Key Biscayne, Florida; and

WHEREAS, the Village wishes to extend the term of the Agreement and provide for revenue sharing; and

WHEREAS, the Village and PADL wish to modify the terms of the Agreement in accordance with the terms and conditions set forth in this First Amendment.

NOW, THEREFORE, for and in consideration of the mutual promises set forth herein, the Village and PADL agree as follows:

1. **Recitals Incorporated.** The above recitals are true and correct and incorporated herein.
2. **Amendment of Section 2 of the Agreement.** Section 2 of the Agreement is deleted in its entirety and replaced as follows:
 2. **Term.** The term of this Agreement shall be from the Effective Date through June 20, 2021, unless earlier terminated in accordance with Section 3. The Village Manager may renew this Agreement for up to two (2) additional one (1) year periods on the same terms as set forth herein upon written notice to PADL.
3. **Amendment of Section 4 of the Agreement.** Section 4 of the Agreement is deleted in its entirety and replaced as follows:
 4. **License Fee.** PADL shall pay the Village 20% of PADL's gross receipts, net of sales tax, as a license fee ("Revenue Share") on a quarterly basis. Gross receipts shall be calculated based upon all revenues generated within the Village. On or before the fifteenth day of January, April, July, and October of each year, PADL shall pay the Village its Revenue Share and provide the Village with a quarterly audit, summary of sales, profit and loss statement, and general ledger sheets in support of the Revenue Share.

4. **Removal of Section 5 of the Agreement.** Section 5 of the Agreement is deleted in its entirety.
5. **Amendment of Section 22 of the Agreement.** Section 22 of the Agreement is deleted in its entirety and replaced as follows:

22. Public Records; Ownership and Access to Records and Audits.

- 22.1. [Intentionally Omitted].
- 22.2. PADL agrees to keep and maintain public records in PADL's possession or control in connection with PADL's performance under this Agreement. The Village Manager or her designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination of this Agreement, have access to and the right to examine and audit any records of the PADL involving transactions related to this Agreement. PADL additionally agrees to comply specifically with the provisions of Section 119.0701, Florida Statutes. PADL shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the Agreement, and following completion of the Agreement until the records are transferred to the Village.
- 22.3. Upon request from the Village's custodian of public records, PADL shall provide the Village with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.
- 22.4. Unless otherwise provided by law, any and all records, including but not limited to reports, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of the Village.
- 22.5. Upon completion of this Agreement or in the event of termination by either party, any and all public records relating to the Agreement in the possession of the PADL shall be delivered by the PADL to the Village Manager, at no cost to the Village, within seven (7) days. All such records stored electronically by PADL shall be delivered to the Village in a format that is compatible with the Village's information technology systems. Once the public records have been delivered upon completion or termination of this Agreement, the PADL shall destroy any and all duplicate public records that are exempt or confidential and exempt from public records disclosure requirements.
- 22.6. Any compensation due to PADL shall be withheld until all records are received as provided herein.
- 22.7. PADL's failure or refusal to comply with the provisions of this section shall result in the immediate termination of this Agreement by the Village.

22.8. Notice Pursuant to Section 119.0701(2)(a), Florida Statutes. IF PADL HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO PADL'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS: Jocelyn B. Koch, 88 West McIntyre Street, Key Biscayne, FL 33149, Telephone: 305-365-5506, Email: JKoch@keybiscayne.fl.gov.

6. **Conflict; Amendment Prevails.** In the event of any conflict or ambiguity between the terms and provisions of this First Amendment and the terms and provisions of the Agreement, the terms and provisions of this First Amendment shall control.
7. **Agreement Ratified.** Except as otherwise specifically set forth or modified herein, all terms in the Agreement are hereby ratified and affirmed and shall remain unmodified and in full force and effect in accordance with its terms.
8. **Defined Terms.** All initial capitalized terms used in this First Amendment but not otherwise defined herein shall have the same meaning ascribed thereto in the Agreement.
9. **Counterparts.** This First Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which, when taken together, shall constitute one and the same instrument. An executed facsimile or electronic copy of this First Amendment shall have the same force and effect as an original hereof.

[THIS SPACE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE FOLLOWS.]






3HX8595-1st Amendment to Revocable License Agreement with PADL

Final Audit Report

2020-12-14

Created:	2020-12-14
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"3HX8595-1st Amendment to Revocable License Agreement with PADL" History

-  Document created by Natalie Winters (nwinters@keybiscayne.fl.gov)
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